

BEFORE THE  
FAIR POLITICAL PRACTICES COMMISSION  
STATE OF CALIFORNIA

In the Matter of  FAIR ELECTIONS GROUP, and NIKOLA MIKULICICH, JR.,  Respondents.	OAH No.: N2002040579  FPPC No. 98/148
In the Matter of  LIBERTY'S TORCH PAC SPONSORED BY YOUNG AMERICANS FOR FREEDOM, and NIKOLA M. MIKULICICH, JR., Treasurer,  Respondents.	OAH No.: N2002040580  FPPC Nos.: 98/763
In the Matter of  CALIFORNIANS AGAINST PHONY ELECTION REFORM and NIKOLA MIKULICICH, JR.,  Respondents.	OAH No.: N2002040582  FPPC Nos.: 98/465
In the Matter of  NIKOLA MIKULICICH, JR.,  Respondent.	OAH No.: N2002040583  FPPC No. 2000/86

**PROPOSED DECISION**

This matter was heard before Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California, on October 21, 2002, and on October 22, 2002.

William L. Williams, Jr., Commission Counsel, represented Complainant, the Fair Political Practices Commission.

Respondent Nikola Mikulicich, Jr., Attorney at Law, represented the respondents.

### PROCEDURAL FINDINGS

1. After a Probable Cause Proceeding and Finding made pursuant to Government Code section 83115.5, Wayne K. Strumpfer made and filed the Accusations in his official capacity as the Executive Director of the Fair Political Practices Commission. The Accusations were consolidated for hearing pursuant to Orders of April 25, 2002 and May 10, 2002.
2. Respondents timely filed a Request for Hearing pursuant to Government Code sections 11504 and 11509. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.
3. On November 25, 2002, complainant moved to dismiss Count 3 of the Accusation against Liberty's Torch. On November 25, 2002, complainant moved to dismiss the Accusation against Californians Against Phony Election Reform. These motions were granted.
4. The evidentiary hearing remained open until November 25, 2002, in order to allow the parties to file and serve Closing Arguments. Complainant's Closing Argument was duly filed. Respondents did not file a Closing Argument.

### FACTUAL FINDINGS

*Fair Elections Group: Nikola M. Mikulicich, Jr., Treasurer*

1. In June of 1995, respondent Fair Elections Group filed an original Statement of Organization with the Secretary of State. Respondent Fair Elections Group was formed as a State General Purpose Committee, with Los Angeles County as its domicile. In July of 1997, respondent Fair Elections Group filed an amendment to its Statement of Organization, designating respondent Nikola M. Mikulicich, Jr. as its treasurer.

2. Fair Elections Group received over \$1,000 in contributions in the first half of 1996. Thus, Fair Elections Group qualified as a recipient committee,<sup>1</sup> giving rise to a

---

<sup>1</sup> Pursuant to Government Code section 82013 (a).

continuing obligation to file campaign disclosure statements until such time as the committee was terminated under the Political reform Act. <sup>2</sup>

3. Fair Elections Group was required to file a semi-annual campaign statement for the reporting period ending on December 13, 1998. This statement was to be filed by February 1, 1999. Fair Elections Group was required to file a semi-annual campaign statement for the reporting period ending on June 30, 1999. This statement was to be filed by August 2, 1999.<sup>3</sup> The Fair Elections Group was required to file the original semi-annual campaign statements with the Secretary of State, to file two copies with the Los Angeles Registrar-Recorder/County Clerk, to file two copies with the San Francisco County Department of Elections, and to file two copies with the county of domicile. <sup>4</sup>

4. Respondent Fair Elections Group failed to file semi-annual campaign statements with the Offices of the Secretary of State, the Los Angeles Registrar-Recorder/County Clerk and the San Francisco County Department of Elections, for the reporting periods ending on December 13, 1998 and June 30, 1999.

*Liberty's Torch Sponsored by Young Americans for Freedom: Nikola M. Mikulicich, Jr., Treasurer*

5. In July of 1996, respondent Liberty's Torch Sponsored by Young Americans for Freedom ("Liberty's Torch") filed an original Statement of Organization with the Secretary of State. Liberty's Torch was formed as a State General Purpose Committee, with Los Angeles County as its domicile. The committee's street address was stated as: "1874 S. Pacific Coast Hwy. #203, Redondo Beach, CA 90277." Respondent Nikola M. Mikulicich, Jr. signed the original Statement of Organization, as treasurer of Liberty's Torch.

6. Respondent Liberty's Torch received over \$1,000 in contributions during the preelection reporting period of July 1, 1998 through September 30, 1998. Thus, Liberty's Torch qualified as a recipient committee, giving rise to a continuing obligation to file semi-annual campaign statements until such time as the committee was terminated under the Political Reform Act.

7. Liberty's Torch failed to file the following semi annual campaign statements:

- For the reporting period ending on December 31, 1998, by February 1, 1999.
- For the reporting period ending on June 30, 1999, by August 2, 1999.
- For the reporting period ending on December 31, 1999, by January 31, 2000.
- For the reporting period ending on June 30, 2000, by July 31, 2000.

---

<sup>2</sup> Pursuant to Government Code section 82013 (a), and section 84214 Title 2 Division 6 California Code of Regulations 1804 (b) and (c).

<sup>3</sup> Pursuant to Government Code section 84200.

<sup>4</sup> Pursuant to Government Code section 84215.

- For the reporting period ending on December 31, 2000, by January 31, 2001

8. Liberty's Torch was required to file the original semi-annual campaign statements with the Secretary of State, to file two copies with the Los Angeles Registrar-Recorder/County Clerk, to file two copies with the San Francisco County Department of Elections, and to file two copies with the county of domicile.

9. Liberty's Torch failed to file semi-annual campaign statements with the Offices of the Secretary of State, the Los Angeles Registrar-Recorder/County Clerk and the San Francisco County Department of Elections, for the reporting periods specified in Factual Finding Number 7.

10. Liberty's Torch failed to file the semi annual campaign statements identified in Factual Finding Number 7 with the Registration and Elections Department for Orange County, as was it obligated when it changed its domicile to Orange County in 1998.

11. Liberty's Torch filed a pre-election statement on October 5, 1998. This statement disclosed that Liberty's Torch received a contribution from the Pechanga Band of Mission Indians ("Pechanga") on September 16, 1998, in the amount of \$167,731. The Pechanga contribution comprised 100% of the contributions received by Liberty's Torch during that pre-election reporting period.

12. Pursuant to Government Code Section 82048.7, a "sponsored committee" is a committee which has one or more sponsors. Any person, except a candidate or other individual, may sponsor a committee. A person sponsors a committee if any of the following apply:

(1) The committee receives 80 percent or more of its contributions from the person or its members, officers, employees, or shareholders.

13. The law requires that the sponsors of committees be disclosed to the public. A committee is required to amend its Statement of Organization to reflect a change in sponsorship within ten days of a change in sponsorship.<sup>5</sup> Subsequent to receipt of the Pechanga contribution, Liberty's Torch failed to amend its Statement of Organization to reflect sponsorship by the Pechanga Band of Mission Indians.

14. The address respondent Liberty's Torch provided in its Statement of Organization was not a street address, but rather a mail receipt box at a Mailboxes Etc. business establishment. Pursuant to Government Code section 84102 (a) a committee's Statement of Organization must include the correct "street address" for the committee. The term "street address" as used in section 84102, "means the street name and building number, and the city, state and zip code." (Regulation 18421.2)

---

<sup>5</sup> Pursuant to Government Code sections 82048.7 (b) (1), 84102 (a) and 84103 (a).

15. Liberty's Torch failed to amend the committee's Statement of Organization to reflect the street address it began using in 1998; 3103 S. Bristol St., Apt.236, Santa Ana, CA 92704. Liberty's Torch was required to amend its Statement of Organization to reflect this change of address within 10 days of the change.

*Nikola M. Mikulicich, Jr. (California College Republicans Political Action Committee)*

16. In July of 1996, respondent California College Republicans Political Action Committee ("CCRPAC") filed an original Statement of Organization with the Secretary of State. Respondent Mikulicich signed the original Statement of Organization as its treasurer. CCRPAC was formed as a state general purpose committee, with Los Angeles County as its domicile.

17. CCRPAC received over \$1,000 in contributions in the 1996 calendar year. Thus, the committee qualified as a recipient committee, giving rise to a continuing obligation to file campaign disclosure statements until such time as the committee was terminated under the Political Reform Act.

18. CCRPAC failed to file the following semi annual campaign statements:

- For the reporting period ending on December 31, 1997, by January 31, 1998.
- For the reporting period ending on June 30, 1998, by July 31, 1998.
- For the reporting period ending on December 31, 1998, by February 1, 1999.

19. CCRPAC was required to file the original semi-annual campaign statements with Secretary of State, to file two copies with the Los Angeles Registrar-Recorder/County Clerk, to file two copies with the San Francisco County Department of Elections, and to file two copies with the county of domicile.

20. CCRPAC failed to file semi-annual campaign statements with the Offices of the Secretary of State, the Los Angeles Registrar-Recorder/County Clerk and the San Francisco County Department of Elections, for the reporting periods specified in Factual Finding Number 18.

#### *Respondents' Testimony*

21. Respondent, Mikulicich testified that he timely filed all semi annual campaign statements with the offices mandated under Government Code section 84215. He testified that the recipient offices must have misplaced or misfiled the documents.

Mikulicich testified that the recipient offices routinely misfiled campaign statements. He testified that he was the treasurer of other committees, which had not been cited for failure to file campaign statements. He argued that he had mailed all campaign statements

for all of his committees at the same time. Some of the campaign statements had been filed and the recipient offices apparently had lost others.

Mikulicich 's testimony was untenable. It is improbable that the Offices of the Secretary of State, the Los Angeles Registrar-Recorder/County Clerk, the San Francisco County Department of Elections, and the Registration and Elections Department for Orange County, could all have lost the same documents. It is improbable that all of these offices could have received a package of identical documents, and then all filed the same documents and misplaced the remaining documents. It is preposterous that this could have happened repeatedly.

Mikulicich could not produce copies of the file stamped campaign statements. He admitted that he ignored numerous notices of non-filing sent to each of the non filing committees by the Los Angeles County Registrar/Recorder of Voters and the Secretary of State advising that campaign statements were overdue.

Further, officials of these filing offices testified persuasively that their filing procedures would have captured, recorded, and stored any campaign statements mailed to their offices during the time periods at issue herein.

22. Mikulicich testified that it was appropriate to use a Mail Boxes Etc. address, as the street address of Liberty's Torch, on that committee's Statement of Organization. He testified that the address was not a post office box, that business was conducted at that site, and that there was someone there during business hours to receive documents. Mikulicich arguments were without merit. The applicable statute and regulations specify that the committee is required to set forth its street name and building number. Respondent was also advised by a Commission counsel that he was required to amend the committee's Statement of Organization to reflect the physical address of the committee. Mikulicich ignored this directive.

23. Mikulicich testified that he had a constitutional right to refuse to amend the Statement of Organization for Liberty's Torch, to reflect sponsorship by the Pechanga Band of Mission Indians. He offered no evidence that the sponsorship provisions of the Fair Political Practices Act had been found unconstitutional in any forum. Respondent's constitutional challenge was not entertained. Article III, Section 3.5 of the California Constitution provides in pertinent part that an administrative agency has no power to declare a statute unenforceable or to refuse to enforce a statute on the basis of its being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional.

## LEGAL CONCLUSIONS

1. The FFPC is charged with the duty to administer, implement and enforce the provisions of the Political Reform Act of 1974, found in Government Code section 81000 through 91015.

2. The purpose of campaign reporting under the Political Reform Act of 1974 is that receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited. Government Code section 81002(a).

3. As set forth in Factual Findings 1 through 4, inclusive, it has been established by a preponderance<sup>6</sup> of credible evidence that respondent Fair Elections Group: Nikola M. Mikulicich, Jr. Treasurer twice violated Government Code section 84200 by failing to file two semi annual campaign disclosure statements.

4. As set forth in Factual Findings 5 through 10 inclusive, it has been established by a preponderance of credible evidence that respondent Liberty's Torch Sponsored by Young Americans for Freedom: Nikola M. Mikulicich, Jr. Treasurer violated Government Code section 84200 on five occasions by failing to file five semi annual campaign disclosure statements.

5. As set forth in Factual Findings 11 through 13 inclusive, it has been established by a preponderance of credible evidence that respondent Liberty's Torch Sponsored by Young Americans for Freedom: Nikola M. Mikulicich, Jr. Treasurer violated Government Code section 82048.7 by failing to amend its Statement of Organization to reflect a change in sponsorship within ten days of a change in sponsorship. .

6. As set forth in Factual Findings 5 and 14, it has been established by a preponderance of credible evidence that respondent Liberty's Torch Sponsored by Young Americans for Freedom: Nikola M. Mikulicich, Jr. Treasurer violated Government Code section 84102 (a) by failing to set forth its street address in its Statement of Organization.

7. As set forth in Factual Findings 5 and 15, it has been established by a preponderance of credible evidence that respondent Liberty's Torch Sponsored by Young Americans for Freedom: Nikola M. Mikulicich, Jr. Treasurer violated Government Code section 84103 by failing to amend its Statement of Organization to reflect the street address it began using in 1998.<sup>7</sup>

---

<sup>6</sup> Pursuant to Title 2, California Code of Regulations section 18361(e)(3), findings shall be made based upon a preponderance of the evidence.

<sup>7</sup> This allegation was not charged as a separate count from that set forth in Legal Conclusion Number 6.

8. As set forth in Factual Findings 16 through 20, inclusive, it has been established by a preponderance of credible evidence that respondent Nikola M. Mikulicich, Jr. (California College Republicans Political Action Committee) violated Government Code section 84200 on three occasions by failing to file three semi annual campaign disclosure statements.

9. In order to determine the penalty to be imposed, if any, for violations of the Fair Political Practices Act the circumstances of the violations must be considered. Title 2, California Code of Regulations section 18361(e) (4) sets forth the following factors, which must be considered in making this determination.

(A) The seriousness of the violation;

(B) The presence or absence of any intention to conceal, deceive or mislead;

(C) Whether the violation was deliberate, negligent or inadvertent;

(D) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code Section 83114(b);

(E) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and

(F) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

#### Seriousness of the Violations

10. Respondent, Nikola M. Mikulicich, Jr., stipulated at hearing that the committees' semi annual campaign statements were very important filings under the Political Reform Act. Respondents' failures to file semi annual campaign statements for the three committees at issue herein, were serious violations. One of the primary purposes of the Political Reform Act is to ensure that committee sponsorship, funding, and expenditures are promptly disclosed to the public. Respondents' failure to file semi annual campaign statements deprived the public of this critical information.

11. The failure of Liberty's Torch Nikola M. Mikulicich, Jr. Treasurer, to amend its Statement of Organization to reflect the sponsorship of the Pechanga Band of Mission Indians was a serious violation of the Political Reform Act. Liberty's Torch had received a substantial contribution, amounting to 100% of its contributions, from the Pechanga Band at a time when Liberty's Torch was supporting Indian gaming. Respondent's failure to disclose



that it had accepted the sponsorship of the Pechanga Band deceived the public. The public remained unaware of the relationship between the committee and the Pechanga Band.

12. The failure of Liberty's Torch Nikola M. Mikulicich, Jr. Treasurer, to amend its Statement of Organization to reflect the street address of the committee, was not a serious violation of the Political Reform Act.

#### Intent to Deceive

13. The evidence is persuasive that respondent Liberty's Torch Nikola M. Mikulicich, Jr. Treasurer, intended to deceive the public by failing to amend its Statement of Organization to reflect the sponsorship of the Pechanga Band of Mission Indians and by failing to file the semi annual campaign statement for the reporting period ending on December 31, 1998. The Pechanga contribution was made during this reporting period.

It was clear at hearing that respondent Mikulicich believed it would be detrimental to this committee to identify the Pechanga Band as a sponsor or major contributor. He testified that the Young Americans for Freedom "always intended to draw from a wide range of donors and not a group which backed a specific cause". The Pechanga Band of Mission Indians was "not in line with [the committee's] overall policies, so listing them as a sponsor would have been very contrary to the purposes of the committee and would involve forced speech making it impossible for the committee to operate". Respondent objected to identifying sponsors under the Political Reform Act because "the donor by being the first large donor would suddenly become the public face of the group, as if setting its policy."

14. There was insufficient evidence that respondents intended to deceive the public through its other failures to file campaign contribution reports.

15. There was insufficient evidence that respondent Liberty's Torch Nikola M. Mikulicich, Jr., Treasurer, intended to deceive the public by failing to amend the Statement of Organization to reflect the committee street address. Mikulicich failed to respond to mailed inquiries and notices, and failed to amend the Statement of Organization when the requirement of a street address was pointed out to him. It was clear in his hearing testimony, that he had no intention of publicly disclosing the committee's street address, for his own philosophical reasons. Refusing to disclose an address is not deceptive.

#### Whether the violation was deliberate, negligent or inadvertent

16. The evidence is persuasive that the violations of all respondents were deliberate and not the result of negligence or inadvertence. Respondent Mikulicich is an attorney and at the times of the violations, he had served as treasurer of many political committees. At hearing, he admitted that he was knowledgeable of committee filing requirements under the Fair Political Practices Act. It was clear that his violations of the Fair Political Practices Act were intentional and deliberate.

Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b)

17 Respondents did not consult with the Commission staff as to whether their actions were legal. On the contrary, Mikulicich chose to decide for himself what was legal, and to act in accordance with his own views. Respondent Mikulicich, at all times in his dealings with the Commission acted in bad faith, choosing not to respond to late filing notices, and refusing to provide a street address for the Liberty's Torch committee.

Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure

18. Respondents' violations were part of a pattern of conduct. Respondent, Mikulicich, had a prior violation of the Act, stemming from failure to file statements. Upon learning of the violations found herein, respondents did file amendments to provide disclosure.

19. Government Code section 83116 (c) provides for administrative fines of up to \$2,000 for each violation of the Fair Political Practices Act which occurred prior to and including January 1, 2001, and \$5,000 for each violation which occurred after January 1, 2001.

20. Giving due to consideration to the violations and to the factors expressed in Title 2, California Code of Regulations section 18361(e) (4), the appropriate monetary penalties for the violations found herein are the maximum penalties and are assessed as follows:

Against Fair Elections Group: Nikola M. Mikulicich, Jr. Treasurer  
the following sums:

\$4,000 for two violations of Government Code sections 84200.

Against Liberty's Torch Sponsored by Young Americans for Freedom: Nikola M. Mikulicich, Jr. Treasurer \$8,000 for four violations of Government Code section 84200, and \$5,000 for one violation subsequent to January 1, 2001.

Against Liberty's Torch Sponsored by Young Americans for Freedom: Nikola M. Mikulicich, Jr. Treasurer \$2,000 for a violation of Government Code section 82048.7.

Against Liberty's Torch Sponsored by Young Americans for Freedom: Nikola M. Mikulicich, Jr. Treasurer \$2,000 for a violation of Government Code section 84102 (a).

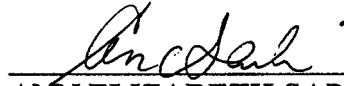
Against Nikola M. Mikulicich, Jr. (California College Republicans Political Action Committee) \$6,000 for three violations of Government Code section 84200.

The total penalty assessed against all respondents is \$27,000.

### ORDER

Respondents Fair Elections Group: Nikola M. Mikulicich, Jr. Treasurer, Liberty's Torch Sponsored by Young Americans for Freedom: Nikola M. Mikulicich, Jr. Treasurer, Nikola M. Mikulicich, Jr. (California College Republicans Political Action Committee) and Nikola Mikulicich, Jr. shall pay the sum of twenty seven thousand dollars (\$27,000) to the General Fund of the State of California.

DATED: December 16, 2002

  
\_\_\_\_\_  
ANN ELIZABETH SARLI  
Administrative Law Judge  
Office of Administrative Hearings